REMARKS

Entry of the foregoing, reexamination, and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested.

Claims 13, 17 and 18 are currently pending in the present application and have been examined on the merits.

I. OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTIONS

The Examiner has rejected claims 13, 17 and 18 under the judicially created doctrine of obviousness-type double patenting as purportedly being unpatentable over claims 5-21 of United States Patent No. 5,814,631 ("the '631 patent"). This rejection is respectfully traversed.

In making this rejection, the Examiner has simply stated that "the same hosts are being treated for the same diseases by the same compounds." OFFICE ACTION at 2 (emphasis added). However, as discussed in applicants' previous response, the active component of the claimed invention of the present application – a quinazoline derivative represented by formula (1) – is not the same as or an obvious variant of any of the active components claimed in the '631 patent. In particular, the substituents of R^1 of the claimed invention of the present application do not overlap with the substituents of R^1 and R^2 of the formula (1) of claims 1-3 of the '631 patent, do not overlap with the substituents of R^1 and R^2 of the formula (1a) of claim 7 of the '631 patent, do not overlap with the substituents of R^1 and R^2 of the formula (1') of claim 8 of the '631 patent, and do not overlap with the substituents of R^1 and R^2 of the formula (1a) of claim 9 of the '631 patent. Therefore, the same or overlapping

compounds are not being used in the claimed invention of the present application and the claims of the '631 patent. As such, withdrawal of the obviousness-type double patenting rejection is in order and is respectfully requested.

Claims 13, 17 and 18 have also been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 16 and 17 of copending Application No. 09/763,213. This rejection is respectfully traversed.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, applicants hereby submit a duly executed Terminal Disclaimer (along with the requisite fee) in connection with copending Application No. 09/763,213. Accordingly, withdrawal of this provisional double patenting rejection is respectfully requested.

II. DIFFERENT INVENTIVE ENTITY, COMMON OWNERSHIP

On pages 3-4 of the Office Action, the Examiner has presumed that both the '631 patent and Application No. 09/763,213 are commonly owned with the present application. Based on this presumption of current common ownership, the Examiner has required the assignee in the present application to either: (1) show that the inventions set forth in the '631 patent, Application No. 09/763,213 and the present application were commonly owned at the time the invention in this application was made; or (2) name the prior inventor of the conflicting subject matter. In response to this requirement, the undersigned representative states the following on behalf of the current assignee (Daiichi Suntory Pharma Co., Ltd.) At the time of filing the present

application, the '631 patent, Application No. 09/763,213 and the present application were commonly assigned to Suntory Limited. In December of 2002, all the cases (the present application, the '631 patent, and Application No. 09/763,213) were assigned to Daiichi Suntory Pharma Co., Ltd.

III. SECTION 102/103 REJECTION

Additionally, claims 13, 17 and 18 have been rejected under 35 U.S.C. § 102 (a and b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over the '631 patent. This rejection is respectfully traversed.

The Examiner's basis for this rejection is the same as the obviousness-type double patenting rejection discussed above. Accordingly, applicants' comments above in traversal of the obviousness-type double patenting rejection are hereby incorporated by reference. Since the compounds used in connection with the invention claimed in the present application are not the same as or obvious variants of the compounds used in the claims of the '631 patent, the Examiner is respectfully requested to withdraw this anticipation/obviousness rejection.

III. CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

If there are any questions concerning this Amendment and Reply, or the application in general, the Examiner is respectfully requested to telephone Applicant's undersigned representative so that prosecution may be expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

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